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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 232 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

STATE OF GUJARAT

Versus

H.K.AGRAVAL

Appearance:

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for the appellent.

MR MJ THAKORE for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/08/96

ORAL JUDGEMENT

This appeal has been directed against the judgment and order dated 18th February 1989, rendered by the learned Judicial Magistrate, First Class, at Talaja, in Criminal Case No. 52 of 1989, whereby the respondent came to be convicted of the offences under Section 40(2) read with Section 92 of the Factories Act and to pay a fine of Rs.3,000/-, in default, Simple Imprisonment for 20 days more.

2. In short, it is the case of the prosecution that, the Factory Inspector visited the premises of the respondent, who is dealing in Ship Breaking at Alang in Bhavnagar District. The Factory Inspector found that, on 28th January 1989 the accident had occurred wherein nine workers died because of bursting of fire and proper safety measures were not provided or made available to the workers. A notice under Section 40 of the Act was issued and the respondent was asked to provide the necessary facilities in accordance with law. As the Factory Inspector found that the offence under Section 40(2) of the Act was committed, he filed the complaint before the lower Court, which came to be registered as Criminal Case No.52 of 1989. On being served with the summons, the respondent appeared before the Court and when his plea was recorded, the respondent pleaded guilty voluntarily, and accepting his plea being made voluntarily, the learned Magistrate, convicted and sentenced the respondent, as aforesaid. The State then found that the lower Court had taken a very lenient view instead of being harsh on such wrong doers and therefore, has preferred this appeal for enhancement of the sentence.

3. The learned Magistrate ought to have, looking to the gravity of the offence, awarded a severe punishment than the lenient one against the respondent, is the submission. It appears that in this case, there was a bargaining or reason to believe about the same, to which, the learned Magistrate was not aware of, and in view of that bargaining, the respondent, it seems, pleaded guilty. What should be done in such case, by the appellate Court, has been made clear by the Apex Court in the case of THIPPESWAMY v. STATE OF KARNATAKA, reported in AIR 1986 S.C. p. 747. It is held that, if the accused pleads guilty and is convicted and sentenced by the Magistrate and thereafter the State prefers the appeal for enhancement of sentence, it would violate Article 21 of the Constitution, because to induce or lead an accused to plead guilty under certain promise or assurance and then let off, and thereafter the Appeal for enhancement is preferred, it would be certainly unjust, and in that case, the conviction should be set aside and the case should be remanded to the trial Court so that the accused can, if he so wishes, defend himself against the charge and if is found guilty, proper sentence can be passed against him, and if not, he can be acquitted.

4. In this case, when likewise has happened, the only course open to me is to remand the case to the lower

Court for fresh trial. In the result, the appeal requires to be allowed and the same is hereby accordingly allowed. The conviction and sentence inflicted for the offence under Section 40(2) read with Section 92 of the Factories Act are hereby quashed and set aside. The case is sent back to the lower Court for fresh trial in accordance with law. The learned Magistrate shall afford all reasonable opportunities to the parties, hear the case and dispose the same of at his earliest, as per law, but not later than 30th November 1996. The parties to appear before the lower Court on 23rd August 1996 at 11.00 a.m.
